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Nos. 92-484 and 92-507

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES NATIONAL BANK OF OREGON,
PETITIONER
v.
INDEPENDENT INSURANCE AGENTS OF
AMERICA, INC., ET AL.

STEPHEN R. STEINBRINK, ACTING COMPTROLLER
OF THE CURRENCY, ET AL., PETITIONERS
v.
INDEPENDENT INSURANCE AGENTS OF
AMERICA, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL PETITIONERS

WILLIAM C. BRYSON
Acting Solicitor General
STUART M. GERSON
Assistant Attorney General
LAWRENCE G. WALLACE
Deputy Solicitor General
CHRISTOPHER J. WRIGHT
Assistant to the Solicitor General
ROBERT V. ZENER
JACOB M. LEWIS
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 514-2217

WILLIAM P. BOWDEN, JR.
Chief Counsel
ERNEST C. BARRETT III
LESTER N. SCALL
Attorneys
Office of the
Comptroller of the
Currency
Washington, D.C. 20219

QUESTION PRESENTED

Whether 12 U.S.C. 92, which authorizes national banks "located and doing business" in places of 5,000 or fewer inhabitants to act as the agent for "any fire, life or other insurance company," was repealed in 1918.

PARTIES TO THE PROCEEDINGS

The petitioner in No. 92-484 is the United States National Bank of Oregon. The petitioners in No. 92-507 are Stephen R. Steinbrink, Acting Comptroller of the Currency; the Office of the Comptroller of the Currency; and the United States.

The respondents in both cases are the Independent Insurance Agents of America, Inc.; the Independent Insurance Agents of Oregon; National Association of Casualty and Surety Agents; the National Association of Life Underwriters; the National Association of Professional Insurance Agents; the National Association of Surety and Bond Producers; the Oregon Association of Life Underwriters; and the Oregon Professional Insurance Agents, Inc.

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OPINIONS BELOW

The statements filed with the order denying the suggestions for rehearing en banc (92-507 Pet. App.

34a-42a) are reported at 965 F.2d 1077. The opinion of the court of appeals (92-507 Pet. App. 1a-33a) is reported at 955 F.2d 731. The opinion of the district court (92-507 Pet. App. 43a-73a) is reported at 736 F. Supp 1162.

JURISDICTION

The judgment of the court of appeals was entered on February 7, 1992. A petition for rehearing was denied on May 22, 1992. 92-507 Pet. App. 34a. On August 7, 1992, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including September 19, 1992. The petition in No. 92-484 was filed on September 18, 1992, and the petition in No. 92-507 was filed on September 19, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

Section 13 of the Federal Reserve Act of 1913, ch. 6, 38 Stat. 263; the Federal Reserve Act Amendments of 1916, ch. 461, 39 Stat. 752; and the War Finance Corporation Act of 1918, ch. 45, 40 Stat. 506, are reproduced at 92-507 Pet. App. 80a-94a.

STATEMENT

1. Petitioner United States National Bank of Oregon (the Bank) is a federally chartered bank headquartered in Portland. In 1984, the Bank applied to the Comptroller of the Currency to sell a full range of insurance through a wholly owned subsidiary located in the Bank's branch in Banks, Oregon, a town of 489 persons. The Comptroller, who is also a petitioner, approved the Bank's application. The Comptroller

relied on a provision of federal law formerly codified at 12 U.S.C. 92, which authorizes a national bank "located and doing business in any place the population of which does not exceed five thousand inhabitants" to act as an agent for "any fire, life or other insurance company."

The Comptroller noted that Section 92, as originally enacted, "impos[ed] * * * a geographic limitation in the statute with regard to [a national] bank's brokerage of real estate loans," but contained no such limitation with respect to the sale of insurance. 92-507 Pet. App. 77a. In addition, the Comptroller observed, the primary purpose underlying Section 92's enactment was to provide "additional income to banks in small towns that were having problems deriving a reasonable profit from their banking business." *Id.* at 78a. "[I]t is consistent with that purpose," the Comptroller stated, to permit national banks to sell insurance outside the small town where its selling office is located; indeed, "the market area for the general banking services of some small town banks may not be large enough to improve significantly the bank's profitability if its insurance sales are limited to that area." *Ibid.* The Comptroller therefore determined that, under Section 92, the Bank's subsidiary was authorized to sell a full range of insurance products to existing and potential customers in Oregon, as well as in those States in which the Bank's insurance subsidiary is authorized to do business. See 92-507 Pet. App. 79a.

Respondents—various trade associations representing insurance agents—challenged the Comptroller's decision in the United States District Court for the District of Columbia. The insurance agents argued

that the sale of insurance by national banks located in small towns should be limited to sales in those towns. Thus, in this case the insurance agents argued that Section 92 authorized the Bank's branch to sell insurance only in Banks, Oregon.

The district court disagreed and granted summary judgment for the defendants, finding that the Comptroller's interpretation of Section 92 was "rational and consistent with the statute." 92-507 Pet. App. 70a-71a. In the course of its opinion, the court noted that Section 92 no longer appears in the United States Code.[1] The district court assumed, however—on the basis of the fact that "Congress, other courts, and the Comptroller have presumed its continuing validity"—that the statute "exists *in proprio vigore*." 92-507 Pet. App. 44a-45a n.2.

2. A divided court of appeals reversed and remanded with instructions to enter judgment for the insurance agents, after concluding, sua sponte, that Section 92 had been repealed less than two years after its enactment by the War Finance Corporation Act of 1918. 92-507 Pet. App. 20a. The court acknowledged that the result it reached was not one that had been urged by any of the parties to the case. In fact, the court observed, when it asked for further briefing on the issue of Section 92's continued existence, the parties had "agreed that section 92 remains in effect." 92-507 Pet. App. 4a. Nevertheless, the court concluded,

[1] Section 92 appeared in the editions of the United States Code issued in 1926, 1928, 1934, 1940, and 1946. It has not appeared in any subsequent edition of the United States Code. In its place, there is a notation by the codifiers that the provision was omitted in the 1918 amendment of Section 5202 of the Revised Statutes.

given that the underlying controversy revolved around the interpretation of a statute omitted from the United States Code, it had a duty to inquire into the statute's existence. *Id.* at 6a.

The court of appeals reviewed laws passed by Congress in 1913, 1916, and 1918. The 1913 Act was the Federal Reserve Act. As originally enacted in 1913, Section 13 of the Federal Reserve Act (which is *reprinted in* 92-507 Pet. App. 80a-82a as it was enacted in 1913) contained seven paragraphs under the title: "Powers Of Federal Reserve Banks." Ch. 6, § 13, 38 Stat. 263-264. The sixth of those paragraphs began by providing that "Section fifty-two hundred and two of the Revised Statutes of the United States"—a statute that dated back to 1863 and which listed certain liabilities that a national bank was permitted to incur in "an amount exceeding the amount of its capital stock"—"is hereby amended so as to read as follows." 92-507 Pet. App. 82a. That sixth paragraph amended Rev. Stat. § 5202 by listing an additional type of permissible national bank liability: "Fifth. Liabilities incurred under the provisions of the Federal Reserve Act." *Ibid.* The seventh and final paragraph of Section 13, as enacted in 1913, authorized the Federal Reserve Board to issue regulations governing the rediscount by federal reserve banks of certain bills receivable and bills of exchange. *Ibid.* The bill Congress passed in 1913 included no quotation marks. See *id.* at 80a-82a.

In 1916, Congress amended the Federal Reserve Act, including Section 13 of the Act. 39 Stat. 752-754. (The Federal Reserve Act Amendments of 1916, ch. 461, 39 Stat. 752, are *reprinted in* 92-507 Pet. App. 83a-93a.) Congress enacted Section 92 at that

time, by adding it to the end of the seven paragraphs contained in Section 13 of the Federal Reserve Act. See 92-507 Pet. App. 87a (first full paragraph).

Unlike the 1913 enactment, the 1916 statute employed quotation marks, and it was on those quotation marks that the court of appeals focused its attention. The 1916 amendments of Section 13 of the Federal Reserve Act commenced by providing "[t]hat section 13 be, and is hereby, amended to read as follows," followed by a colon and opening quotation marks. 92-507 Pet. App. 83a. The 1916 amendment went on to reprint each paragraph of Section 13 as it had been enacted in 1913, with certain substantive changes. In addition, each paragraph began with opening quotation marks, and no closing quotation marks appeared until the end of the sixth paragraph.

As in the 1913 Act, that sixth paragraph (92-507 Pet. App. 86a (first full paragraph)) immediately preceded the paragraph beginning "Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows" (92-507 Pet. App. 86a (second full paragraph)). The paragraph involving Rev. Stat. § 5202 was reprinted in the 1916 amendments without any change in wording from 1913; however, opening quotation marks were added after that paragraph's introductory phrase. The next paragraph (92-507 Pet. App. 86a-87a), which provided (as in the 1913 version) for regulation by the Federal Reserve Board of certain transactions by federal reserve banks, was amended substantively in 1916; opening quotation marks were placed before that paragraph as well. The following paragraph (92-507 Pet. App. 87a (first full paragraph)), which was new in 1916 and was later codified at 12 U.S.C. 92, granted national banks

in small towns the power to act as agents for any "fire, life or other insurance company." That paragraph (henceforth "Section 92") also began with quotation marks. No closing quotation marks appeared until the end of the paragraph following Section 92 (92-507 Pet. App. 87a-88a), which was also added in 1916. The paragraph following those closing quotation marks (*id.* at 88a (first full paragraph)) amended Section 14 of the Federal Reserve Act.

Relying on the placement of the opening and closing quotation marks in the 1916 amendments, the court of appeals concluded that, "on its face, the 1916 amendments had the effect of placing section 92 within section 5202 of the Revised Statutes." 92-507 Pet. App. 9a. That is, the court concluded that Section 13 consisted of the six paragraphs from the words "[t]hat section thirteen be, and is hereby, amended so as to read as follows" to the first closing quotation marks. *Id.* at 83a-86a. The next four paragraphs, from "Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows" to the provision amending Section 14 (92-507 Pet. App. 86a-88a) were part of Rev. Stat. § 5202, in the court's view. Section 92 was the third of the four paragraphs that the court concluded were placed in Rev. Stat. § 5202 by the 1916 amendments.

That conclusion proved crucial, for in 1918 Congress amended Rev. Stat. § 5202 in the course of enacting the War Finance Corporation Act. See ch. 45, § 20, 40 Stat. 512, *reprinted in* 92-507 Pet. App. 94a. The 1918 amendment specified that Rev. Stat. § 5202 "is hereby amended so as to read as follows," then listed the five existing types of liabilities national banks had been authorized to incur in excess

of their capital stock, and added: "Sixth. Liabilities incurred under the provisions of the War Finance Corporation Act." 92-507 Pet. App. 94a. The 1918 amendment did not, however, restate any of the three paragraphs that in 1916 had followed the paragraph beginning "Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows." Because the War Finance Corporation Act did not set out those three paragraphs (which included Section 92), the court of appeals concluded that they had been repealed in 1918. 92-507 Pet. App. 9a-10a.

The court characterized the parties' contrary analysis of the 1916 amendments—that Section 92 was part of Section 13 of the Federal Reserve Act—as "plausible" and acknowledged that "the placement of section 92 in section 5202 of the Revised Statutes [by the 1916 Act] might well have been a mistake." 92-507 Pet. App. 19a. As the court observed, Section 92 and its companion paragraphs were "textually unrelated" to the listing of the permissible types of excess national bank liabilities contained in Section 5202. 92-507 Pet. App. 11a. Moreover, the court noted, when Congress had itself examined the question in 1958, "an impressive array of witnesses" had concluded that Congress did not intend to place Section 92 in Section 5202 of the Revised Statutes, and that Section 92 had therefore never been repealed. 92-507 Pet. App. 11a.

The court ultimately dismissed the intentions of the 1916 Congress as "essentially irrelevant," on the ground that it was the actions of the 1918 Congress that mattered. 92-507 Pet. App. 12a. The court found it "fair to assume" that members of the 1918 Congress "would have sought out a current text of

section 5202 to work from, and not relied on institutional memories of what the text was, or should have been." *Ibid.* Since in 1916 two "privately published services" placed Section 92 in Section 5202 of the Revised Statutes (see 9 U.S. Comp. Stat. Ann. § 9764 (West 1916); 3 U.S. Stat. Ann. § 5202 (T.H. Flood & Co. 1916)), and the quotation marks in the 1916 Act supported that conclusion, the court "assume[d] that the 65th Congress understood section 92 to be part of section 5202, and that its exclusion from the amended section 5202 signaled its repeal." 92-507 Pet. App. 13a. The court reached that conclusion despite the fact that, as the court conceded, the purpose of the 1918 War Finance Corporation Act—"to assist the financing of the war effort"—"had no logical relationship to the insurance activities of small town banks." *Ibid.*

The court gave no weight to Section 92's subsequent treatment by Congress and the administrative agencies charged with administering the federal banking laws. The court acknowledged that Congress in 1982 had purported to amend Section 92, and that the Comptroller has continued to treat Section 92 as valid law, but dismissed their views as "irrelevant" and "immaterial" to the issue of whether Congress had in fact repealed Section 92 in 1918. 92-507 Pet. App. 15a. Similarly, the court dismissed the various judicial decisions since Section 92's omission from the Code that have relied upon Section 92—including *Commissioner* v. *First Security Bank of Utah, N.A.*, 405 U.S. 394 (1972)—on the ground that in each of those cases the court "presumed" that Section 92 remains valid. 92-507 Pet. App. 16a.

The court also eschewed the power to "rectify Congress's apparent error." 92-507 Pet. App. 14a. It

distinguished numerous cases in which courts had disregarded erroneous statutory punctuation on the ground that each involved an error that "distorted the meaning of a statute," but did not lead to repeal of the statute. *Ibid.*

Judge Silberman, dissenting, would have upheld the Comptroller's decision as embodying a reasonable interpretation of Section 92, without reaching the question whether the provision remains good law. Conceding that his position "might be thought counterintuitive" (92-507 Pet. App. 27a), Judge Silberman believed that the court had no duty to reach the issue of the statute's existence, which appellants had "carefully, deliberately and thoughtfully waived." *Id.* at 31a.

3. The Comptroller and the Bank filed timely petitions for rehearing with suggestions for rehearing en banc, which were denied. Judge Silberman (this time joined by two colleagues) again dissented on the ground that the panel should not have decided whether Section 92 had been repealed. 92-507 Pet. App. 38a. In addition, Judge Silberman observed that the government had made "a forceful argument that the panel * * * decided the matter incorrectly." *Id.* at 40a. He added that "the panel's opinion * * * created legal uncertainty concerning the sale of insurance by banks located and doing business in small towns (which has been the settled practice for most of this century)." *Id.* at 40a-41a.[2]

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[2] Judge Sentelle, joined by the panel majority, filed a statement concurring in the denial of rehearing en banc. 92-507 Pet. App. 35a-37a. Judge Randolph filed a separate statement expressing his view that "denials of rehearing en banc are best followed by silence." *Id.* at 42a.

SUMMARY OF ARGUMENT

The court of appeals suggested no reason why Congress in 1918 might have wanted to repeal Section 92, which it had enacted just 19 months before. Instead, the court was content to consider the matter a "mistake" (92-507 Pet. App. 20a) resulting from the placement of the quotation marks in the 1916 Act. But the court's conclusion ignores the language, structure, and substance of the 1916 Act. Where the language of a statute admits of no other meaning, a court may be obliged to give effect to a provision that does not embody Congress's intent. But respect for the legislative process requires a court to do more than conclude that Congress blindly erred where, as we show here, there is another reasonable interpretation.

A. The quotation marks in the 1916 Act support the court of appeals' decision only when considered in isolation. The language of the 1916 Act suggests that Section 92 was never placed in Rev. Stat. § 5202, and therefore was not affected when Rev. Stat. § 5202 was amended in 1918. More specifically, in 1916 Congress used the phrase "this Act" to refer to "the Federal Reserve Act" in those provisions that were to be part of the Federal Reserve Act. On the other hand, it referred to the Federal Reserve Act by its full name if the provision was to be codified elsewhere. The paragraph beginning "Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows" (92-507 Pet. App. 86a (second full paragraph)) accordingly used the full name of the Federal Reserve Act. The paragraph immediately preceding Section 92, in contrast, referred to the Federal Reserve Act as "this Act," showing that it was part of the Federal Reserve

Act. If the paragraph preceding Section 92 was part of the Federal Reserve Act, then so was Section 92.

That structure is supported by the fact that the title of the 1916 Act did not state that the Act was amending a provision of the Revised Statutes, even though the practice of the day was to make such a specification if an amendment to the Revised Statutes was contained in the body of the statute. In addition, it would have been inconsistent with the substance of Rev. Stat. § 5202, which for more than fifty years had dealt with limits on national bank indebtedness, for Congress to have codified Section 92 and the paragraphs preceding and following it in Rev. Stat. § 5202, since those three paragraphs had nothing to do with limits on national bank indebtedness. Those three paragraphs fit into the Federal Reserve Act, however, which is where Congress intended to place them.

B. As a general matter, it is a mistake to exalt punctuation over the language, structure, and substance of a statute. In this case, moreover, there is affirmative evidence that Section 92's drafters did not intend the quotation marks to have any interpretive significance—the Senate voted to delete the confusing marks. 53 Cong. Rec. 11,155 (1916).

C. The conclusion that Section 92 was never placed in Rev. Stat. § 5202 explains why there is no indication in the language or the legislative history of the 1918 Act that Congress thought that it was repealing Section 92. Moreover, there is no reason why Congress would have wanted to repeal the three paragraphs it had enacted 19 months earlier. Such considerations led the Second Circuit to hold, after the decision in this case, that Section 92 remains good law. *American Land Title Ass'n* v. *Clarke*, 968 F.2d

150, 154 (2d Cir. 1992), petitions for cert. pending, Nos. 92-482 and 92-645.

D. Contrary to the court of appeals' suggestion, it is unlikely that the 1918 Congress understood Section 92 to be in Rev. Stat. § 5202 simply because two private compilations placed the provision there. As we have stated, the text of the 1916 Act as reprinted in the Statutes at Large suggested a different structure. In any event, the most easily accessible compilation of the banking laws in 1918 was that published by the Senate Committee on Banking and Currency, which showed Section 92 as part of Rev. Stat. § 5202 *and* as part of Section 13 of the Federal Reserve Act. S. Doc. No. 412, 64th Cong., 1st Sess. 83-84 (1917) (Rev. Stat. § 5202); S. Doc. No. 412, *supra*, at 136-137 (Section 13). On the basis of the Senate compilation—the compilation to which the Congress most likely would have turned—the drafters of the 1918 Act would have concluded that Section 92 would remain in force no matter how Rev. Stat. § 5202 was amended.

E. Congress, the courts, and the agencies charged with the administration of the banking laws have consistently acted on the assumption that Section 92 remains good law. See, *e.g.*, Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, § 403(b), 96 Stat. 1469, 1510-1511; *Commissioner* v. *First Security Bank of Utah, N.A.*, 405 U.S. 394, 400-401 (1972); *Financial Institutions Act of 1957: Hearings on S. 1451 and H.R. 7026 Before the House Comm. on Banking and Currency*, 85th Cong., 2d Sess. 1036-1040 (1958) (statement of Comptroller and Federal Reserve Board memorandum). Moreover, the contemporaneous view of Congress and the agencies administering the federal banking laws—the best available guide to what Congress intended—was that

Section 92 remained in effect after 1918. See S. Doc. No. 216, 66th Cong., 2d Sess. 146 (1920); Federal Res. Bd., *The Federal Reserve Act As Amended* 30 (1919).

ARGUMENT

SECTION 92 WAS NOT REPEALED IN 1918

A. The Language, Structure, And Substance Of The 1916 Act Show That Section 92 Was Not Placed In Rev. Stat. § 5202.

The court of appeals' error lies in its reliance on the placement of the quotation marks in the 1916 Act to the exclusion of analysis of the text, structure, and substance of the Act, all of which demonstrate that Section 92 was never placed in Rev. Stat. § 5202 in 1916. As a result, Section 92 was not affected at all—much less repealed—when Rev. Stat. § 5202 was amended in 1918.[3]

1. The opening and closing quotation marks, considered in isolation, suggest that in 1916 Section 92

[3] The Bank has raised the question whether the court of appeals should have addressed the issue of Section 92's existence when the parties to the proceeding agreed that Section 92 remained good law. We did not present this as a question in our petition for a writ of certiorari in this case, and do not urge it as a ground for reversal here. Although the court of appeals may have had the *discretion* to refuse to determine the issue of Section 92's existence (see *Carducci* v. *Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983)), we cannot say that it was powerless to resolve the question if it chose to do so (see *Arcadia, Ohio* v. *Ohio Power Co.*, 111 S. Ct. 415, 418, 422 (1990), and *United States* v. *Burke*, 112 S. Ct. 1867, 1877 (1992) (Scalia, J., concurring)). Indeed, had the text of the law shown that Section 92 actually had been repealed in 1918, it would have been entirely proper for the court to decline to construe it. Moreover, at this point we think the Court should provide a definitive answer as to whether Section 92 was repealed.

and its companion paragraphs (that is, the paragraphs preceding and following Section 92) were to be placed in Rev. Stat. § 5202. However, the language of the 1916 Act suggests differently. The paragraph preceding Section 92 in the 1916 Act grants the Federal Reserve Board authority to regulate the "discount and rediscount and the purchase and sale by any Federal reserve bank of any bills receivable and of domestic and foreign bills of exchange, and of acceptances authorized *by this Act*." 92-507 Pet. App. 86a-87a (emphasis added). The reference to "this Act" must mean the Federal Reserve Act, not Rev. Stat. § 5202, since the discount and rediscount authority was granted by the second and third paragraphs of Section 13 of the Federal Reserve Act, and not by Rev. Stat. § 5202. See 92-507 Pet. App. 84a-85a. Thus, the use of the term "this Act" in the paragraph preceding Section 92 suggests that, despite the use of quotation marks, the preceding paragraph was not placed in Rev. Stat. § 5202.

The conclusion that the paragraph preceding Section 92 was part of Section 13 of the Federal Reserve Act, and not part of Rev. Stat. § 5202, is strengthened by the fact that that paragraph was indisputably part of Section 13 of the Federal Reserve Act as enacted in 1913, since the 1913 Act contained no quotation marks. See 92-507 Pet. App. 80a-82a. In addition, no one has suggested any reason that Congress would have felt it necessary or appropriate in 1916 to transfer the paragraph preceding Section 92 —a provision granting the Federal Reserve Board authority to regulate certain practices of federal reserve banks—from the Federal Reserve Act to a section of federal law dealing with the indebtedness of national banks. To the contrary, a provision dealing

with regulation of federal reserve banks by the Federal Reserve Board would seem to belong in the Federal Reserve Act. Moreover, as enacted in 1913, the paragraph that preceded Section 92 in 1916 also referred to "this Act" (see *id.* at 82a), as it did in 1916. In our view, it is clear that "this Act" referred to the Federal Reserve Act both in 1913 and in 1916.

By referring to "this Act," the paragraph preceding Section 92 follows the same usage as other paragraphs in the 1916 Act, which also refer to "this Act" in a manner that can only mean "the Federal Reserve Act." For example, the 1916 Act added a new subsection (Section 11(m)) to the Federal Reserve Act, which authorized the Federal Reserve Board to permit member banks to deposit all or part of the reserves "now required by section nineteen of *this Act* to be held in their own vaults" in federal reserve banks. 92-507 Pet. App. 83a (emphasis added). Because the 1916 Act was not divided into numbered sections, the reference to "section nineteen of this Act" can only be to Section 19 of the Federal Reserve Act, which set forth detailed requirements according to which member banks were to hold a certain percentage of their reserves in their own vaults. See 38 Stat. 270-271. (Section 19 was not amended at all in 1916.) The same usage was employed in the provision in the 1916 Act amending the second paragraph of Section 16 of the Federal Reserve Act. See 92-507 Pet. App. 89a (referring to "section thirteen of this Act" and "section 14 of this Act").

The text of the paragraph beginning "Section fifty-two hundred and two of the Revised Statutes of the United States is hereby amended so as to read as follows" also supports the conclusion that it was only that paragraph that related to Rev. Stat. § 5202,

because that paragraph refers to the "Federal reserve Act," rather than "this Act." See 92-507 Pet. App. 86a (line beginning "Fifth"). The reference in that paragraph to the Federal Reserve Act by its full title is not surprising, since a reader of Rev. Stat. § 5202 would otherwise have no way of knowing to which Act the provision referred. The usage makes the inference to be drawn from the term "this Act" in the paragraph preceding Section 92 even stronger, since it suggests that Congress in 1916 distinguished between statutory provisions that were not to be placed in the Federal Reserve Act (and thus would have to refer to that Act by its full title) and provisions that remained part of the Federal Reserve Act, which could intelligibly refer to the Federal Reserve Act as "this Act."[4]

In short, since the text of the paragraph preceding Section 92 uses the term "this Act" to refer to the Federal Reserve Act, that paragraph was not placed in Rev. Stat. § 5202. And if the paragraph preceding Section 92 was not placed in Rev. Stat. § 5202, then there is no reason to think that any of the paragraphs that followed it, including the paragraph later codified as Section 92, were placed in Section 5202. That is, no reading of the quotation marks permits the conclusion that the paragraph preceding Section

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[4] The use of the term 'this Act" in the paragraph preceding Section 92 is plainly not an antecedent reference to the term "Federal reserve Act," contrary to the suggestion of the insurance agents. Br. in Opp. 14. The term "this Act" was used twice in the 1916 amendments before the phrase "Federal reserve Act" appears. See 92-507 Pet. App. 83a (paragraph beginning "'(m)"), 84a (first full paragraph). There was no antecedent reference in either of those instances, and there is no good reason to think that "this Act," as similarly used in the paragraph preceding Section 92, referred back to "Federal reserve Act" in the paragraph containing Rev. Stat. § 5202.

92 was placed in the Federal Reserve Act, but Section 92 was placed in Rev. Stat. § 5202.

2. The title of the 1916 Act, which "can aid in resolving an ambiguity in the legislation's text" (*INS* v. *National Center for Immigrants' Rights, Inc.*, 112 S. Ct. 551, 556 (1991) (citations omitted)), also is inconsistent with the conclusion that the 1916 Act amended Rev. Stat. § 5202. That title, "An Act To amend certain sections of the Act entitled 'Federal reserve Act,' approved December twenty-third, nineteen hundred and thirteen," nowhere suggests that the statute was adding matter to Rev. Stat. § 5202. (And, in fact, none of the words in the paragraph involving Rev. Stat. § 5202 differ from the words in that provision as it was amended in 1913. Compare 92-507 Pet. App. 82a with *id.* at 86a.) By contrast, the titles of other statutes passed during the same period demonstrate that when Congress intended to amend a section of the Revised Statutes as well as a provision of the Federal Reserve Act, that intent was reflected in the title. See ch. 177, 40 Stat. 967 (1918) ("An act to amend and reenact sections four, eleven, sixteen, nineteen, and twenty-two of the Act approved December twenty-third, nineteen hundred and thirteen and known as the Federal reserve Act, and sections fifty-two hundred and eight and fifty-two hundred and nine, Revised Statutes."); ch. 101, 40 Stat. 1314 (1919) ("An act To amend sections seven, ten, and eleven of the Federal reserve Act, and section fifty-one hundred and seventy-two, Revised Statutes of the United States."). The absence of any similar indication in the title of the 1916 Act supports the conclusion that the 1916 Act did not add Section 92 and its

companion paragraphs to Rev. Stat. § 5202, but simply restated Rev. Stat. § 5202 without change.[5]

3. The substance of the 1916 amendments also indicates that Section 92 was not placed in Rev. Stat. § 5202. Section 5202, originally enacted as part of the National Bank Act, had always dealt with limits on the indebtedness of national banks.[6] By contrast, Section 92 dealt with insurance agency and real estate brokerage powers of national banks and has nothing to do with limits on indebtedness. The subject matter of the paragraphs on either side of Section 92 is similarly remote from the subject matter of Rev. Stat. § 5202. As noted, the paragraph

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[5] The paragraph in the 1916 Act relating to Rev. Stat. § 5202 begins by stating "Section fifty-two hundred and two of the Revised Statutes of the United States *is hereby amended* so as to read as follows" (92-507 Pet. App. 86a) (emphasis added)), but that is exactly how it read in 1913 (see *id.* at 82a). Thus, the substantive amendment to Rev. Stat. § 5202 (the addition of the provision stating "[f]ifth," that "[l]iabilities incurred under the provisions of the Federal Reserve Act" may be incurred in excess of the value of the bank's capital stock) occurred in 1913. Congress did not intend to amend Rev. Stat. § 5202 in 1916; it simply reprinted it, along with the rest of Section 13 of the Federal Reserve Act as enacted in 1913, with the amendments made in 1916.

[6] Rev. Stat. § 5202 was based on Section 36 of the National Bank Act of 1864 (Act of June 3, 1864) ch. 106, § 36, 13 Stat. 99, 110, which in turn reenacted with minor changes Section 42 of the National Bank Act of 1863 (Act of Feb. 25, 1863) ch. 58, § 42, 12 Stat. 665, 677. Rev. Stat. § 5202 originally contained four listed exclusions from the limits on national bank indebtedness. The fifth exclusion was added when Rev. Stat. § 5202 was amended by Section 13 of the Federal Reserve Act in 1913 (see 92-507 Pet. App. 82a), and a sixth was added by Section 20 of the War Finance Corporation Act of 1918 (40 Stat. 512) (see 92-507 Pet. App. 94a).

preceding Section 92 concerns the Federal Reserve's power to issue regulations regarding certain practices of federal reserve banks. The paragraph following Section 92 deals with foreign acceptances by federal reserve and member banks. There is no reason that Congress would have placed those provisions in Rev. Stat. § 5202 rather than in the Federal Reserve Act.

B. The 1916 Act's Quotation Marks Are Of No Interpretive Significance.

As a general matter, quotation marks should not override the structure of the statute's text. As this Court long ago recognized, "[p]unctuation is a most fallible standard by which to interpret a writing." *Ewing* v. *Burnet*, 36 U.S. (11 Pet.) 41, 54 (1837). See also *Erie R. R.* v. *United States*, 240 F. 28, 32 (6th Cir. 1917) ("The presence or absence of a comma, according to the whim of the printer or proof reader, is so nearly fortuitous that it is a wholly unsafe aid to statutory interpretation.").[7] In this case, moreover, there is strong evidence that Congress did not intend the quotation marks in the 1916 Act to have any interpretive effect. Indeed, it is apparent that the statute's drafters did not intend to employ quotation marks at all.

[7] The D.C. Circuit recognized that a number of decisions of this Court have stated that punctuation errors may be rectified to avoid distortion of a statute. 92-507 Pet. App. 14a. But it said that this case differs from those cases because "the putative error brings about the repeal of a statute." *Ibid.* This distinction—that courts may correct punctuation errors to avoid what may be relatively small mistakes (such as accidental changes in meaning), but may not correct punctuation errors to avoid big mistakes (such as accidental repeal)—is unconvincing. It seems especially unpersuasive where, as here, if the erroneous punctuation is not corrected, the text of the statute must be ignored.

The committee bill, which contained Section 92's companion paragraphs but not Section 92 (which was added by amendment), used quotation marks. But the quotation marks in the committee bill clearly placed the paragraph preceding Section 92 in Section 13 of the Federal Reserve Act.[8] Section 92 was added by floor amendment before the quotation marks were changed, so it is clear that Section 92 was not part of Rev. Stat. § 5202 at the time it was adopted. After Section 92 was added to the bill, Senator Brandegee drew attention to the committee's use of quotation marks. He asked Senator Owen, "Inasmuch as this bill provides that certain sections of the Federal reserve act are to be amended 'to read as follows,'" whether he thought that "the amended sections ought to be left in quotation marks, so that they will appear in that way in the Federal reserve act?" 53 Cong. Rec. 11,155 (1916). Owen agreed that although quotation marks had been used in the committee report, he "did not think they should be used"; instead, he thought that they "should be omitted." *Ibid.* Brandegee thereupon suggested "that in the reprint to be made of the bill the quotation marks be omitted," to which Owen replied: "I accept that amendment." *Ibid.* The amendment was then adopted by the Senate without objection. *Ibid.*

[8] In the committee bill, opening quotation marks appeared after the provision stating that Section 13 was "amended to read as follows," and closing quotation marks did not appear until after the provision that ultimately preceded Section 92. H.R. Rep. No. 481, 64th Cong., 1st Sess. 1-3 (1916); 53 Cong. Rec. 10,998 (1916). The final paragraph of Section 13 in the committee bill, which followed Section 92 after it was added, was printed in italics in the committee bill because it was entirely new; that final paragraph had no quotation marks at all. H.R. Rep. No. 481, at 3.

It is difficult to know precisely at what point, and by whom, the new quotation marks were inserted.[9] What is clear is that the Act's drafters did not intend for the marks to have any significance in interpreting the statute, since the drafters had instructed that the marks be removed. Thus, apart from the difficulties associated with interpretive reliance on punctuation in general, there is no reason in this case to conclude that the marks should control over the evidence in the text of the 1916 Act that Section 92 was not placed in Rev. Stat. § 5202.[10]

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[9] Materials obtained from the National Archives indicate that before publication in the Congressional Record, the Senate Conference Report did not contain any quotation marks, and although the House Conference Report had such marks inserted by hand, they did not conform to the marks as they appear in the enrolled Act. See Exhibit to Brief of Amici Curiae American Bankers Ass'n in Support of Petitioners. The Senate and House Conference Reports, as they were printed in the Congressional Record, *do* contain the quotation marks as they appear in the Statutes at Large. 53 Cong. Rec. 13,069 (1916) (Senate Conf. Rep.); *id.* at 13,354 (House Conf. Rep.). The enrolled Act, which has been examined in the National Archives, also contains the quotation marks as they appear in the Statutes at Large.

[10] Indeed, the quotation marks at issue in this case appear to be of considerably less significance than most punctuation. That is, while punctuation generally is of less significance than text, punctuation is usually embedded in text, and frequently serves to give meaning to the text. The quotation marks at issue here are wholly extraneous to the meaning of the text; they are more in the nature of marginal printer's notes, such as directions about spacing and indentation. The fact that they were viewed as being of little significance is shown by the fact that some unknown person inserted them while the Act was being printed. See note 9, *supra*.

C. There Is No Indication That Congress Intended To Repeal Section 92 In 1918, Nor Any Reason Why It Should Have.

The conclusion that Congress in 1916 did not place Section 92 and its companion provisions in Rev. Stat. § 5202—and thus that Section 92 was unaffected by the 1918 amendments—also satisfactorily explains the otherwise extraordinary silence in the legislative history of the 1918 War Finance Corporation Act, which contains not a word about repealing the recently enacted national bank and federal reserve powers.

The 1918 Act established a "War Finance Corporation" authorized, among other things, to advance funds to "any bank * * * in the United States" which had outstanding loans to persons or businesses "whose operations shall be necessary or contributory to the prosecution of the war." Ch. 45, § 7, 40 Stat. 508. To further the operations of the War Finance Corporation, Section 20 of the 1918 Act amended Rev. Stat. § 5202 to provide for another type of indebtedness that a national bank could assume in excess of the amount of its capital stock: "Sixth. Liabilities incurred under the provisions of the War Finance Corporation Act." 92-507 Pet. App. 94a. As Representative Kitchin explained, "[i]f we do not put in this provision, and make the change in the law which this amendment makes, it will tie the hands of the national banks from helping out these corporations." 56 Cong. Rec. 3804 (1918).

Nothing in the legislative history of the 1918 Act suggests even indirectly that the Act was intended to affect (much less repeal) Section 92 and its companion paragraphs. As the Second Circuit has

observed—in concluding that Section 92 remains good law—"if it actually was Congress' intent to effect such a permanent change to an unrelated area of law, we would expect some clue to this intent to appear somewhere in the legislative history." *American Land Title Ass'n* v. *Clarke*, 968 F.2d at 154.[11]

The lack of any indication in the legislative history of the 1918 Act that any member of Congress thought that Section 92 and its companion paragraphs were being repealed is particularly significant given that Senator Owen, Section 92's principal sponsor, remained Chairman of the Senate Banking Committee in 1918. Moreover, although Senator Owen commented on other matters concerning the 1918 Act, during the initial Senate debates, see 56 Cong. Rec. 2793, 2799-2801, 2848-2850, 2852-2855, 2858, 2860-2861, 2919-2924, 2926-2927, 3040-3408, 3090, 3107-3109, 3131-3133, 3135-3136, 3138-3144, 3151 (1918), and after the bill was returned to the Senate from conference with Section 20 added, 56 Cong. Rec. 4379 (1918), he made no comment that suggested that there was a move afoot to repeal Section 92. In addition, Comptroller Williams was still in office in 1918. 2 *Annual Rep. of the Comptroller of the Currency* (Dec. 2, 1918), H.R. Doc. No. 1453, 65th Cong., 3d Sess. 15 (1919). He, too, presumably would also have commented on any change that would have repealed a provision that he had successfully submitted less than two years before, particularly a provision contained in a Treasury Department-proposed measure, as the 1918 Act was.[12]

Other aspects of the 1918 Act also suggest that it was not intended to repeal Section 92. In the first place, it would be "wholly incongruous," as the Second Circuit observed, "for Congress to repeal a provision regarding the totally unrelated matter of insurance agency powers in an emergency measure directed at winning the war." *American Land Title*, 968 F.2d at 154. It is also "highly unlikely" that the legislature's intent to encourage national banks to support the operations of the War Finance Corporation "would just happen to coincide with an intent to repeal provisions regarding national banks' insurance agency powers." *Ibid.*

Furthermore, there is no reason to suspect that the grounds upon which Congress had relied in passing Section 92 had significantly changed between the 1916 Act's enactment in September of that year and April 1918, when the War Finance Corporation Act was passed. As Comptroller Williams stated in proposing Section 92, the provision was intended to enlarge the powers of small national banks in order "to provide

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[11] It is the Comptroller's position, supported, *inter alia*, by *Independent Bankers Ass'n of Am.*, v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980), that Section 92 does not constitute a limitation on activities (such as the sale of title insurance) that fall within the incidental powers of national banks. Accordingly, we disagree with the Second Circuit's ultimate conclusion in *American Land Title* —that Section 92 impliedly bars national banks from selling title insurance—but not its conclusion that Section 92 remains good law. The government has filed a petition for a writ of certiorari seeking review of the Second Circuit's decision, which remains pending. *Steinbrink* v. *American Land Title Ass'n*, No. 92-645. See also *The Chase Manhattan Bank, N.A.* v. *American Land Title Ass'n*, No. 92-482.

[12] Indeed, Comptroller Williams submitted an annual report to Congress in 1918 in which the War Finance Corporation Act is described, but no mention is made of Section 92. 1 *Annual Report, supra*, at 79, 171.

them with additional sources of revenue" so that they might be able to "better compete" with state banks and trust companies "authorized * * * to do a class of business not strictly that of commercial banking." 53 Cong. Rec. 11,001 (1916) (letter from Comptroller Williams to Senator Owen). Comptroller Williams explained that there were many banks "located in country communities" that, given their limited deposit base, had difficulty generating "a satisfactory return to shareholders," which led to pressure to charge "excessive and in some cases grossly usurious [interest] rates." *Ibid.*[13] It was his hope that the additional income to be derived from their Section 92 powers would "strengthen" the smaller national banks "and increase their ability to make a fair return to their shareholders." *Ibid.*

There is nothing to suggest that the pressures on small banks to "yield a satisfactory return to shareholders" (*ibid.*) decreased dramatically in the 19 months between the passage of the 1916 and 1918 Acts. If anything, the temptation to charge excessive interest would have grown as the United States became involved in World War I. In any event, the problem Comptroller Williams described resulted from the structure of small town banking, and that problem existed whatever the economic conditions prevailing at any particular time. In the end, no one has been able to put forth any reason why Congress in 1918 would have wanted to repeal the national bank insurance

[13] Williams noted in his letter that in 1916 there were more than 2,000 national banks with a minimum capital stock of $25,000 located in towns or villages of 3,000 or fewer inhabitants. 53 Cong. Rec. 11,001 (1916).

agency powers it had taken the trouble to enact in 1916."

D. There Is No Reason To Credit Section 92's Treatment By Two Privately Published Statutory Compilations.

The D.C. Circuit acknowledged that deleting Section 92 was "unrelated" to the 1918 Act's war financing goals, but assumed that the 1918 Congress understood Section 92 to be part of Rev. Stat. § 5202 because of the "facially unambiguous language" of the 1916 Act and the fact that two "privately published services" placed Section 92 in Rev. Stat. § 5202. 92-507 Pet. App. 13a (citing 9 U.S. Comp. Stat. Ann. § 9764 (West 1916); 3 U.S. Stat. Ann. § 5202 (T.H. Flood & Co. 1916)). However, as shown above, the 1916 Act does not unambiguously show Section 92 to be part of Rev. Stat. § 5202. Indeed, insofar as resort is made to the text of the Act rather than its punctuation, the Act placed Section 92 in Section 13 of the Federal Reserve Act. And it should be beyond dispute that the views of the editors of privately published services are not controlling.

While it is "fair to assume" (as did the D.C. Circuit) that, while drafting the 1918 Act, interested members of Congress "would have sought out a current text of section 5202 to work from, and not

[14] A similar point can be made about the paragraph preceding Section 92 (providing for regulation by the Federal Reserve Board of certain practices of federal reserve banks) and the paragraph following Section 92 (providing for the acceptance of certain bills of exchange). There is no explanation as to why those provisions, which were added in 1913 and 1916, would have been repealed in 1918. And neither of those provisions related to the subject matter of the War Finance Corporation Act of 1918.

relied on institutional memories" (92-507 Pet. App. 12a), it is unlikely that the drafters would have turned to privately published services. The most easily accessible compilation of the Federal Reserve and National Bank Acts would have been that prepared by the Comptroller and published by the Senate Committee on Banking and Currency. Indeed, if Congress did not use the compilation it published, it is not clear why it would have bothered to publish the compilation. Significantly, the Senate compilation showed Section 92 and its companion provisions as part of Rev. Stat. § 5202 *and* as part of Section 13 of the Federal Reserve Act. S. Doc. No. 412, 64th Cong., 1st Sess. 83-84 (1917) (Rev. Stat. § 5202); S. Doc. No. 412, *supra*, at 136-137 (Section 13).[15] Thus, the drafters of the 1918 Act would have assumed on the basis of the Senate compilation that Section 92 would continue in existence however Rev. Stat. § 5202 was amended. Indeed, the Senate Committee and Federal Reserve Board compilations published *after* the 1918 Act was enacted continued to show Section 92 as part of Section 13 of the Federal Reserve Act. S. Doc. No. 216, 66th Cong., 2d Sess. 146 (1920); Federal Res. Bd., *The Federal Reserve Act As Amended* 30 (1919). Thus, both Congress and the agencies charged with administering the federal banking laws believed—and had a reasonable basis for believing—that Section 92 remained in effect after the enactment of the War Finance Corporation Act of 1918.

[15] A compilation of the Federal Reserve Act prepared by the Federal Reserve Board in 1917 also placed Section 92 and its companions in Section 13 of the Federal Reserve Act, although it reproduced the confusing punctuation of the Statutes at Large. Federal Res. Bd., *The Federal Reserve Act As Amended* 27-28 (1917).

E. Section 92's Existence Has Been The Basis For Congressional, Judicial, And Administrative Actions For 75 Years

Finally, the subsequent actions of Congress, the courts, and the Comptroller are utterly inconsistent with the conclusion that Section 92 has been repealed.

After holding hearings in 1958 which aired the issue of Section 92's existence,[16] Congress has twice in recent years enacted legislation which has assumed Section 92's existence. Indeed, in the Garn-St Germain Depository Institutions Act of 1982, Congress amended "[t]he Act of September 7, 1916 (12 U.S.C. 92; 39 Stat. 753)" by striking out the section concerning real estate brokerage authority. See Pub. L. No. 97-320, § 403(b), 96 Stat. 1469, 1510-1511. Plainly, there would have been no reason to amend Section 92 in 1982 if the statute had been repealed in 1918. Similarly, in the Competitive Equality Banking Act of 1987, Congress imposed a one-year moratorium on the expansion of national bank insurance agency activities "pursuant to the Act of September 7, 1916 (12 U.S.C. 92)." See Pub. L. No. 100-86, § 201(b)(5), 101 Stat. 552, 583. Again, there was no reason for Congress to have imposed a moratorium on the expansion of Section 92 activities if it no longer remained good law.

In addition, until the decision in this case, every court that had discussed Section 92—including this Court—had assumed its continued existence. See *Commissioner* v. *First Security Bank of Utah, N.A.*, 405

[16] See *Financial Institutions Act of 1957: Hearings on S. 1451 and H.R. 7026 Before the House Comm. on Banking and Currency*, 85th Cong., 2d Sess. (1958).

U.S. 394, 401-402 (1972); *Independent Ins. Agents of Am., Inc.* v. *Board of Governors*, 835 F.2d 1452, 1456 n.8 (D.C. Cir. 1987); *Independent Bankers Ass'n of Am.* v. *Heimann*, 613 F.2d 1164, 1170 (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980); *First National Bank of Lamarque* v. *Smith*, 610 F.2d 1258, 1261 n.6 (5th Cir. 1980); *Saxon* v. *Georgia Ass'n of Indep. Ins. Agents, Inc.*, 399 F.2d 1010, 1013 (5th Cir. 1968); *Commissioner* v. *Morris Trust*, 367 F.2d 794, 795 n.3 (4th Cir. 1966); *Genessee Trustee Corp.* v. *Smith*, 102 F.2d 125, 127 (6th Cir. 1939); *Thompson* v. *Kerr*, 555 F. Supp. 1090, 1096, 1098 (S.D. Ohio 1982); *Guaranty Mortgage Co.* v. *Z.I.D. Assocs., Inc.*, 506 F. Supp. 101, 104-105 (S.D.N.Y. 1980); *Washington Agency* v. *Forbes*, 16 N.W.2d 121, 121-122 (Mich. 1944); *Marshall National Bank & Trust Co.* v. *Corder*, 194 S.E. 734, 736 (Va. 1938); *Greene* v. *First National Bank of Thief River Falls*, 215 N.W. 213, 213 (Minn. 1927). Indeed, because of the wealth of authority assuming Section 92's existence, the Fifth Circuit stated in *First National Bank of Lamarque* that "further discussion of the issue seems moot." 610 F.2d at 1262 n.6 (5th Cir. 1980). See also *American Land Title Ass'n* v. *Clarke*, 968 F.2d 150, 154 (2d Cir. 1992), petitions for cert. pending, Nos. 92-482 and 92-645 (holding, after the decision in this case, that Section 92 has not been repealed); *Owensboro National Bank* v. *Moore*, 803 F. Supp. 24, 33 (E.D. Ky. 1992) (same).

In *First Security*, for example, this Court overturned a determination by the Commissioner of Internal Revenue which sought to allocate to certain banks income derived from the sale of insurance policies received by affiliates. On the basis of the assumption that Section 92 bars such banks "from receiving insurance-related income" (405 U.S. at 402), the Court concluded that "fairness requires the tax to fall on the party that actually receives the premiums rather than on the party that cannot" (*id.* at 405). See also *id.* at 414 n.1 (Marshall, J., dissenting) (describing Section 92 as "the dispositive factor" in the Court's analysis); *id.* at 419 (Blackmun, J., dissenting) (noting "the Court's repetitive emphasis on the missing § 92").

Lastly, the Comptroller, who is charged with implementing and interpreting Section 92, as well as the Federal Reserve Board, which generally has authority to enforce the Federal Reserve Act, have consistently taken the position that Section 92 was not enacted as part of Rev. Stat. § 5202 and was not repealed in 1918. See, *e.g.*, S. Doc. No. 216, 66th Cong., 2d Sess. 146 (1920) (compilation prepared under the Comptroller's direction); Federal Res. Bd., *The Federal Reserve Act As Amended* 30 (1919). *1958 Hearings, supra*, at 1036 (letter from Comptroller Gidney to House Banking Chairman Spence); *id.* at 1036-1040 (memorandum prepared by Federal Reserve Board); Federal Res. Bd., *Federal Reserve Act and Other Statutory Provisions Affecting the Federal Reserve System* ¶ 1-121 (1990).

While we readily agree that such subsequent treatment cannot revive a statute whose text clearly indicates its repeal, the texts of the relevant statutes in this case, fairly read, do not support the conclusion that Section 92 was repealed. At the least, there is ambiguity. The best guide to the proper resolution of that ambiguity, in our view, is the contemporaneous construction of the statute. *Norwegian Nitrogen*

Co. v. *United States*, 288 U.S. 294, 315 (1933) (the administrative practice "has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion"). As we have shown, no one at the time interpreted the 1918 Act to have repealed Section 92. The 1920 Senate compilation, which was prepared under the direction of the Comptroller of the Currency, showed Section 92 to be part of Section 13 of the Federal Reserve Act. S. Doc. No. 216, 66th Cong., 2d Sess. 146 (1920). So did the compilation prepared by the Federal Reserve Board following the 1918 amendment. Federal Res. Bd., *The Federal Reserve Act As Amended* 30 (1919). Section 92 appeared in the 1926 edition of the United States Code (and the 1928, 1934, 1940, and 1946 editions, too). It was not until 34 years after the 1918 amendment, when the 1952 edition of the United States Code was being prepared, that any question arose as to whether Section 92 was in force. But the contemporaneous views of Congress and the agencies charged with administering the federal banking laws—which have not changed since 1918—show that Section 92 was not repealed in 1918. It is that interpretation, rather than the views of the codifiers of the 1952 edition of the United States Code, to which deference is due in resolving ambiguity in the statute. Cf. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 843 (1984).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

WILLIAM C. BRYSON
Acting Solicitor General

STUART M. GERSON
Assistant Attorney General

WILLIAM P. BOWDEN, JR.
Chief Counsel

LAWRENCE G. WALLACE
Deputy Solicitor General

ERNEST C. BARRETT III
LESTER N. SCALL
Attorneys
Office of the Comptroller of the Currency

CHRISTOPHER J. WRIGHT
Assistant to the Solicitor General

ROBERT V. ZENER
JACOB M. LEWIS
Attorneys

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